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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

SHIRLEY HILL,

Plaintiff and Appellant,

v.

SOUTHERN CALIFORNIA EDISON  
COMPANY,

Defendant and Respondent.

E054748

(Super.Ct.No. CIVRS910480)

OPINION

APPEAL from the Superior Court of San Bernardino County. Ben T.

Kayashima, Judge. (Retired judge of the San Bernardino Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

The Arkin Law Firm, Sharon J. Arkin; Law Offices of Stephen L. Belgum and Stephen L. Belgum for Plaintiff and Appellant.

Long & Delis, John A. Delis and Warren B. Campbell for Defendant and Respondent.

Shirley Hill (Hill) sued Southern California Edison Company (SCE) and others for the wrongful death of her adult son, James Bean (Son). The trial court found Hill lacked standing to bring the wrongful death lawsuit because she was not financially dependent on Son. (Code Civ. Proc., § 377.60, subd. (b).)<sup>1</sup> The trial court entered summary judgment against Hill and dismissed Hill's complaint as it pertained to SCE. Hill contends the trial court erred by entering summary judgment against her because she was financially dependent on Son, and therefore had standing to bring her lawsuit. We affirm the judgment.

### **FACTUAL AND PROCEDURAL HISTORY**

Hill was born in April 1942. When she filed her complaint in September 2009, she was 67 years old. In April 2009, Son was involved in a solar panel construction project on a rooftop leased by SCE in Chino. While working on the rooftop, Son slipped and fell through a skylight. Son fell 37 feet onto a concrete floor. Son died as a result of the fall. Son is survived by (1) his mother, Hill; (2) his son (Sheeler), (3) his two sisters, (4) two brothers, and (5) his "common law" wife. Sheeler also filed a wrongful death lawsuit concerning Son's death.

In 1998, Hill was unemployed and going through a divorce. Hill moved into Son's home and lived with him. A few months after moving into Son's home, Hill obtained a job working at a gas station. Hill lived with Son and worked at the gas station until sometime in 2001. In 2002, Hill moved into the home of her daughter,

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<sup>1</sup> All subsequent statutory references will be to the Code of Civil Procedure unless otherwise indicated.

Rhonda Adams (Adams). Adams was employed as a manager at a retail establishment. Hill continues to reside with Adams.

In 2003, Hill obtained a job working at a movie theater. At the time of Son's death, Hill was employed as a supervisor at the movie theater. Hill worked 40 hours per week and earned \$9.75 per hour. Also at the time of Son's death, Hill was receiving \$1,400 per month from social security for "widow's benefits." Hill received health coverage through Medicare. Hill stopped driving in 2001 and did not have car expenses; she was able to walk to her job at the movie theater.

Over the years, Son gave Hill money or small gifts. For example, Son would "buy [Hill] cigarettes." Son also gave Hill a watch, a computer, and perfume. "[A] couple of times" Son took Hill out to restaurants for breakfast and dinner. "[T]wo or three times a month," Son would give Hill \$20 to "\$100 or more." Hill would use Son's money for "living expenses," such as the electricity bill and to purchase clothes and shoes for work. Hill was not expecting any money from Son at the time he died.

Son worked on the solar panel project for two weeks before his death. Prior to those two weeks of employment, Son had been unemployed for four months. During those four months of unemployment Hill gave Son money for food and rent "a couple of times." Hill also made "at least three or four payments of \$500 on [Son's] car."

In February 2010, Hill's lawsuit was consolidated with Sheeler's lawsuit. On April 6, 2011, another defendant, Potter Roemer, LLC, filed a motion for summary judgment against Hill. Potter Roemer asserted Hill lacked standing to pursue the

wrongful death claim. The following day, SCE joined in Potter Roemer's motion, asserting Hill lacked standing.

Hill opposed the summary judgment motion. Hill asserted she produced sufficient evidence to create a triable issue of fact as to whether she was financially dependent on Son. Hill set forth the proposition that in order to have standing she only needed to show she depended on Son for items such as shelter, clothing, food, and medical treatment. Hill reasoned that she met this burden by showing (1) she used Son's money to pay her electricity bill and buy clothes, and (2) Son took her to eat at restaurants.

In July 2011, Potter Roemer settled with Hill out of court. Potter Roemer agreed to pay Hill and Sheeler \$100,000 each for a release of all claims. At the hearing on the summary judgment motion, the trial court stated it believed the law required Hill to be financially dependent on Son at the time of Son's death, as opposed to some earlier time. The trial court acknowledged the standing statute did not reflect any language concerning financial dependence at the time of death, but the trial court gleaned the "at the time of death" rule from case law. Hill's trial attorney argued the law did not support the "financial dependence at the time of death" rule the trial court was applying in this case.

In its written ruling, the trial court set forth the rule that Hill "must have been actually dependent on the decedent, at least in part, for the 'necessaries of life,' at the time of his death. [Citations.]" The trial court found Hill was not financially dependent on Son at the time of Son's death because (1) Hill did not live with Son; (2) Hill had a

monthly income of approximately \$3,000; (3) Hill resided with Adams; (4) Hill did not drive a car; (5) Hill had her own health insurance; and (6) for approximately four months prior to Son's death, Son was financially dependent on Hill. Thus, the trial court concluded Hill lacked standing to pursue a wrongful death claim. The trial court granted summary judgment in favor of SCE and dismissed Hill's complaint in its entirety as it pertained to SCE.

## **DISCUSSION**

Hill contends the trial court erred by granting summary judgment in favor of SCE. We disagree.

"The standard of review for an order granting or denying summary judgment is de novo. [Citation.] We are not bound by the trial court's stated reasons for granting summary relief, as we review the trial court's ruling, not its rationale. [Citation.] In determining whether the parties have met their respective burdens, we consider 'all of the evidence the parties offered in connection with the motion (except that which the court properly excluded) and the uncontradicted inferences the evidence reasonably supports.' [Citation.] We view the evidence in the light most favorable to plaintiff[] as the part[y] opposing summary judgment, strictly scrutinizing defendant[']s evidence in order to resolve any evidentiary doubts or ambiguities in plaintiff[']s favor. [Citation.]" (*Dammann v. Golden Gate Bridge, Highway and Transportation District* (2012) 212 Cal.App.4th 335, 340-341.)

Section 377.60, subdivision (b), provides: "A cause of action for the death of a person caused by the wrongful act or neglect of another may be asserted by any of the

following persons or by the decedent's personal representative on their behalf: [¶] . . . if they were dependent on the decedent, the putative spouse, children of the putative spouse, stepchildren, or parents.” “For purposes of this subdivision, dependence refers to financial support,” as opposed to emotional support. (*Chavez v. Carpenter* (2001) 91 Cal.App.4th 1433, 1445 (*Chavez*).)

“Financial dependence generally presents a question of fact, which ‘should be determined on a case-by-case basis.’ [Citation.] ‘No strict formula can be applied nor did the Legislature suggest a formula[.]’ [Citation.]” (*Chavez, supra*, 91 Cal.App.4th at pp. 1445-1446.) Nevertheless, cases have provided guidance for determining financial dependence. A parent may be considered financially dependent when “‘at the time of a child’s death, [the parent was] actually dependent, to some extent, upon the decedent for the necessities of life.’ [Citation.]” (*Id.* at p. 1446.) The necessities of life include “shelter, clothing, food and medical treatment, which one cannot and should not do without.” (*Ibid.*)

A parent will *not* be considered financially dependent “‘if they receive financial support from their children which merely makes available to them some of the niceties of life they might not otherwise be able to afford.’” (*Chavez, supra*, 91 Cal.App.4th at p. 1446.) A parent needs to show that the child’s death “‘results in a distinct pecuniary loss to the parent which requires the parent to find aid elsewhere for the basic things we all need.’ [Citation.]” (*Ibid.*)

The evidence presented reflects Hill was financially dependent on Son from 1998 through sometime in 2001, when she lived with Son and did not pay any rent while

living with him; thus Son was providing Hill with shelter. The record does not reflect financial dependence after 2001. The record shows Son provided Hill with cigarettes, perfume, and a computer.

The record further reflects Son gave Hill cash, which she used to purchase clothes for work and pay an electrical bill or gas bill. Son also purchased restaurant meals for Hill. While this evidence reflects Hill took money from son to pay for necessities, it does not show financial dependence. As set forth *ante*, dependence is shown by actually needing the money the child provides, such that when the child dies the parent suffers “‘a distinct pecuniary loss[,] which requires the parent to find aid elsewhere for the basic things we all need.’ [Citation.]” (*Chavez, supra*, 91 Cal.App.4th at p. 1446.)

Hill may have used the money from Son to purchase necessities, but she has failed to provide evidence reflecting she needed the money to make those payments and purchases. Hill testified she was not expecting any money from Son at the time of his death. Hill further testified she had been providing financial support to Son for four months prior to his death, while he was unemployed. This evidence reflects Hill was financially independent from Son—Hill may have accepted money from Son, but she did not need that money. Hill has not shown “a distinct pecuniary loss” due to Son’s death. As Hill herself testified, she was not expecting any money from Son at the time of his death. Thus, she did not rely on Son for financial support in life—she was not expecting son to bring her groceries or pay her utility expenses. Accordingly, we

conclude the trial court did not err, because Hill has not provided evidence she was financially dependent on Son.

Hill contends summary judgment was not properly granted because she only needed to show she was financially dependent on Son ““to some extent.”” Hill asserts she did not need to provide evidence of “total and complete financial dependence.” We agree Hill does not need to show she is completely dependent on Son, but she needed to provide some evidence his death created a distinct pecuniary loss that would require her to seek financial aid from another person for basic life necessities. (*Chavez, supra*, 91 Cal.App.4th at p. 1446.) Hill did not meet this burden. Hill’s own testimony reflects she was not expecting any money from Son at the time of his death. Thus, there cannot be any financial loss requiring Hill to seek money or aid from another person, and there has been no showing of financial dependence to any extent—Hill appears to be financially independent.

In addition, Hill cites *Chavez* for the proposition a parent can earn a paycheck but still be financially dependent on a child. In *Chavez*, the deceased adult child lived with his parents. (*Chavez, supra*, 91 Cal.App.4th at p. 1436.) The child paid his parents \$100 per week to defray the parents’ cost of housing and utilities, he also provided groceries and grocery money, cleaned windows, maintained the parents’ four vehicles, performed yard work, helped pay for the parents’ truck, and occasionally worked for his father’s cleaning business when his father was shorthanded. (*Id.* at p. 1447.) The respondent in *Chavez* argued the parents’ income was sufficient to sustain them without the child’s assistance. The appellate court disagreed with the respondent, finding the



parents had greatly relied on the adult child for financial support in 1994—the child died in 1996. (*Id.* at pp. 1436, 1447.) Thus, the appellate court concluded there was evidence reflecting the parents needed the child’s money to defray their own living expenses. (*Id.* at pp. 1447-1448.)

Hill asserts the *Chavez* case is useful because it shows there does not need to be complete financial dependence. We do not find the *Chavez* case to be persuasive because Hill was last dependent on Son in 2001—eight years before his death—and in the interim, Hill had financially supported Son so he could afford necessities. In *Chavez*, the son was actively paying rent and providing groceries to his parents—here we have the opposite. Hill was paying Son’s rent and car payment, and had no expectation of receiving money from Son at the time of his death. The record in the instant case reflects Hill was financially independent from Son.

While Hill has shown she accepted money from Son, she has not shown she was financially dependent on him in the eight years before his death.

Hill asserts she did not need to show she was financially dependent on Son at the time of his death. Hill contends it is sufficient she showed she was financially dependent on Son “prior to his death.” We infer Hill is asserting the evidence reflects she was dependent on Son prior to his four-month period of unemployment. As explained *ante*, the evidence reflects Hill had not been dependent on Son since 2001. Hill does not appear to be asserting the standing statute should reach back eight years in order to afford a person standing, thus, we find the “at the time of death” argument to be unpersuasive.

Also, Hill asserts standing is a threshold issue that should not require a rigorous evidentiary showing. Hill's argument is not persuasive because she has not presented any evidence that she was financially dependent on Son in the eight years prior to his death—she has only shown that she took money from Son, not that she required it. Thus, assuming Hill is correct and a very minimal level of evidence is required to satisfy the standing issue, she has still failed to meet that minimal level.

Hill argues that the four months of financial support she gave to Son prior to his death should not limit Hill's standing because when Son was employed he consistently provided financial support to Hill. Hill asserts SCE is taking advantage of this four-month window to create an “unjustified windfall” to SCE. Hill appears to mistakenly be asserting that the four-month window, in and of itself, is preventing her from obtaining standing, but this is not the case.

The evidence of Hill financially supporting Son reflects Hill's financial independence. This evidence shows Hill accepted money from son, but did not *need* or *require* the money to pay for the necessities of life. In other words, the evidence helps to show Hill was not going to suffer a distinct pecuniary loss requiring her to find aid elsewhere for the basic things we all need after Son's death, because Hill did not need Son's support even when he was alive—his support may have been nice, but it was not necessary. (*Chavez, supra*, 91 Cal.App.4th at p. 1446.) This evidence is further supported by Hill's testimony she was not expecting any money from Son at the time of his death. Hill does not lack standing solely because there was a four-month gap in Son's long history of giving money to Hill; rather, there is nothing reflecting Hill

required money from Son for the last eight years of his life, and the “four month evidence” compounds this by reflecting Hill was, without a doubt, financially independent from Son.

Hill asserts the evidence she financially supported Son does not show she is financially independent as there is nothing in the record indicating Hill did not sacrifice her own necessities in order to support Son. This argument is not persuasive because if Hill had evidence she had to sacrifice her own necessities in order to support Son then she should have presented that evidence. (*Garibay v. Hemmat* (2008) 161 Cal.App.4th 735, 741 [after defendant meets its burden on motion for summary judgment, burden shifts to plaintiff to establish triable issue of fact exists].) Speculation about whether Hill had to make sacrifices to support Son will not support reversal of a judgment. (*Thomas v. Stenberg* (2012) 206 Cal.App.4th 654, 657 [reversal not warranted where plaintiff’s evidence “raises nothing more than speculation, suspicion, or conjecture”].)

Hill argues the evidence supports an inference that when she grew too old to work, then Son would have provided her with financial support and “more substantial financial contributions.” Hill’s argument is not persuasive because the statutory language reflects the phrase “were dependent on the decedent”—it does not contemplate future financial dependence as a means of obtaining standing. (§ 377.60, subd. (b).) Moreover, Hill’s argument is problematic because it would require the court to speculate that she will live to an age when she is unable to work; speculation is not evidence. (*People v. Waidla* (2000) 22 Cal.4th 690, 735.)

Lastly, Hill asserts the trial court erred by judging the witnesses' credibility, weighing the evidence, and resolving issues of fact. Hill highlights the trial court's comment that the declarations submitted in support of Hill's case were "cookie cutter-type" declarations. Hill's argument is not persuasive, because the trial court's comment was merely an explanation of why it concluded Hill failed to meet her burden of production—why she failed to establish a triable issue of fact existed. (*Garibay v. Hemmat, supra*, 161 Cal.App.4th at p. 741 [after defendant meets its burden on motion for summary judgment, burden shifts to plaintiff to establish triable issue of fact exists].)

#### **DISPOSITION**

The judgment is affirmed. Respondent is awarded its costs on appeal.

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MILLER  
J.

We concur:

RICHLI  
Acting P. J.

KING  
J.